

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FITNESS ANYWHERE LLC,
Plaintiff,
v.
WOSS ENTERPRISES LLC,
Defendant.

Case No. [14-cv-01725-BLF](#)

**ORDER STRIKING AMENDED
COUNTERCLAIM WITH DIRECTIONS
TO DEFENDANT; TERMINATING
MOTION TO DISMISS**

[Re: ECF 20, 25]


On July 28, 2014, Defendant filed a First Amended Counterclaim pursuant to Federal Rule of Civil Procedure 15(a)(1)(B). (ECF 25) The initial counterclaim was incorporated in Defendant's Answer. (ECF 16). The First Amended Counterclaim was improperly filed as a separate document that does not include Defendant's Answer. Fed. R. Civ. P. 7, 13; *see also* Civil Local Rule 10-1 ("Any party filing . . . an amended pleading must reproduce the entire proposed pleading and may not incorporate any part of a prior pleading by reference."). Accordingly, the Court STRIKES Defendant's First Amended Counterclaim. IT IS HEREBY ORDERED that Defendant shall file an Answer and Amended Counterclaim that complies with the applicable federal and local rules no later than **seven (7) days** from the date of this order. Defendant shall make no other changes to its pleadings.

The Federal Rules permit a party to amend its pleading "once as a matter of course" within "21 days after service of a motion under Rule 12(b)." Fed. R. Civ. P. 15(a)(1)(B). An amended pleading supersedes the original. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967); *see also* *Connectu LLC v. Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008). Because Defendant's Answer and Amended Counterclaim, once filed, will stand as the operative pleading, Plaintiff's motion to dismiss the original counterclaim, filed July 15, 2014, (ECF 20), is hereby terminated as moot.

Plaintiff shall have until **August 22, 2014** to respond to Defendant's Amended Counterclaim.

IT IS SO ORDERED.

Dated: August 4, 2014


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California